

**Oakland Unified School District
Department of Facilities Planning and Management
955 High Street Oakland CA 94601**

REQUEST FOR QUALIFICATIONS AND PROPOSALS (RFQ/P)

**Local Business Utilization Consulting Services
For Measure Y Bond Measure**

January 26, 2022 (Issued)

Responses must be received February 17, 2022, no later than 2:00 p.m.

The Oakland Unified School District ("District") is requesting proposals from experienced firms, partnerships, corporations, associations, persons or professional organizations ("Consultants") to provide Local Business Utilization ("LBU") Consulting Services associated with the Measure Y Bond Measure ("Project").

Interested firms are invited to submit a complete Statement of Qualifications ("SOQ") along with a detailed Fee Proposal (collectively "RFQ/P Packet") as described below, with one (1) unbound wet-signed original, five (5) bound copies and a PDF version on a flash drive of requested materials to:

Oakland Unified School District
Tadashi Nakadegawa, Deputy Chief
Department of Facilities Planning and Management
955 High Street, Oakland, CA 94601

Oral, telegraphic, facsimile and telephone RFQ/P Packets will not be accepted. RFQ/P Packets received after this date and time will not be accepted and returned unopened. The District reserves the right to waive any informalities or irregularities in the RFQ/P Packets. The District also reserves the right to reject any and all RFQ/P Packets and to negotiate contract terms with one or more Respondents.

Due to the circumstances caused by the Covid-19 pandemic, the District will accept electronic Proposals sent via email in lieu of hard copies. Proposals received by the District no later than 2:00 p.m. (Pacific Time) on February 17, 2022 via email will be accepted (to Juanita Hunter at juanita.hunter@ousd.org and the contacts below).

If you have any questions regarding this RFQ/P please email Kenya Chatman, Executive Facilities Director at kenya.chatman@ousd.org, and cc: to Colland Jang at colland.jang@ousd.org.

LOCAL, SMALL LOCAL AND SMALL LOCAL RESIDENT BUSINESS ENTERPRISE

PROGRAM The Local Business Utilization Policy 7115 requires that there is a mandatory fifty percent (50%) LBU participation with a 25% or less Local Business (LBE) participation and a 25% or more Small Local or Small Local Resident Business (SLBE/SLRBE) participation for all capital program/construction-related contracts and professional services agreements.

On April 28, 2021, the Board of Education amended the Local Business Policy which had named the City of Oakland as the singular agency to certify local businesses to include five additional local business certifications. For businesses located in Oakland, Local Business and Small Local Business certifications may also be accepted from the Port of Oakland, Alameda County Transportation Commission, Alameda County Department of General Services, US Department of Transportation California Unified Certification Program, and the California Public Utilities Commission.

The District will follow the City of Oakland Small Business size standards in recognizing Small Local and Small Local Resident Businesses.

The full version of OUSD's latest Local, Small Local and Small Local Resident Business Enterprise Program can be found by going to the OUSD home page: ousd.org> Offices and Programs> Facilities Planning & Management Department> For Contractors and Developers> Bids and Requests for Proposals> Bid Information> 2021 Amendment to Local Business Participation Policy.

SCHEDULE OF ACTIVITIES

Listed below is the "Schedule of Activities" which outlines pertinent dates of which firms responding to this solicitation should make themselves aware.

DATE	ACTIVITY
January 26, 2022	RFQ/P Issued.
February 3, 2022	Written requests for Interpretation, Correction or Modification are due.
February 10, 2022	District will provide written responses to requests for clarification.
February 17, 2022	Proposals Due by 2:00 p.m.
February 24, 2022	Tentative date for interviews
April 13, 2022	Board Meeting – tentative approval of Contract
April 14, 2022	Tentative Notice to Proceed issued to Consultant

ESTIMATED CONSTRUCTION BUDGETS:

PROJECT DURATION: Base contract shall be 2 years with two 1-year option renewals.

REQUEST FOR QUALIFICATIONS & PROPOSALS

The purpose of this RFQ/P is to solicit Statement of Qualifications and Fee Proposals from consulting firms to oversee and administer the District's Local Business Utilization Policy for the Measure Y Bond Measure.

A. PROJECT DESCRIPTION

MEASURE "Y" BOND MEASURE PROJECTS:

See Attachment 1 for Bond Projects.

B. BASIC SERVICES

The Consultant agrees to provide the Services described below:

1. The Consultant shall be responsible for the professional quality and technical accuracy of all reports and other services furnished by the Consultant under the Agreement as well as coordination with other District Consultants. The Consultant shall, without additional compensation, correct or revise any errors or omissions in its reports and other Services.
2. The Consultant will use all due care and diligence to confirm that its reports and all other information provided by or on behalf of the Facilities Department to the Board of Directors and third parties discloses and publishes any potentially relevant information that could, in any way, have an impact on a Contractor's cost of performance. The Consultant shall advise the District of the most effective methods of identifying and securing such information as part of each stage of services. The Consultant shall track for District's benefit all such suggested and disclosed information.
3. **Mandatory Assistance.** If a third party dispute or litigation, or both, arises out of, or relates in any way to the Services provided under this Agreement, upon the District's request, the Consultant, its agents, officers, and employees agree to assist in resolving the dispute or litigation. The Consultant's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation ("Mandatory Assistance").

C. GENERAL STATEMENT OF WORK:

Consultant shall support OUSD's Facilities Planning and Management Department in the business outreach, procurement support, vendor engagement, compliance, monitoring the District's Local Business Utilization Policy, along with supporting community engagement and collaboration efforts.

1. **Program Analysis.** Consultant shall familiarize themselves with the District's existing LBU program, Bond Measures J and Y capital improvement projects / initiatives, and deferred maintenance plans in collaboration with Facilities, Buildings & Grounds, Custodial Services, and its respective consultants to develop a strategy to maximize LBU participation.
2. **Outreach.** Conduct a LBU availability analysis identifying all firms certified with the City of Oakland and other agencies approved by OUSD's Board of Education, current

backlog, capacity, expertise, needs assessment, along with identifying competing local and regional capital improvement projects.

Develop and implement an annual business outreach plan, collaborate with the local building trades, and resource industry organizations and partners to identify and market procurement opportunities.

3. **Coordination.** Coordinate with local certification agencies approved by OUSD's Board of Education to determine current approval durations, impediments to certification, and to assist local vendors in completing this process.
4. **Procurement Support.** Consultant shall participate in pre-proposal, pre-bid and pre-construction meetings pertaining to the LBU program. Consultant shall track and verify certifications, review professional service proposals and construction-related bids. Consultant shall also participate in scoring the LBU portion of proposals, evaluating bid submissions and analyze GFE documentation.
5. **Vendor Engagement.** Manage OUSD's SLRBE certification process, update existing LBU database, along with fostering prime and subcontractor relationships.
6. **Community Outreach.** Consultant shall serve as liaison for the Facilities Department and OUSD's Office of the Superintendent to build relationships with key community stakeholders, coordinate meetings with the City of Oakland, Alameda County, and other public agencies with procurement departments.

Plan and conduct vendor outreach meetings, along with contractor academies in collaboration with Alameda PWA. In conjunction with the Facilities Department, support collaboration with local publications such as the Oakland Post and El Mundo, and other community relations activities as directed by the Facilities Department
7. **Compliance & Monitoring.** Consultant shall be a resource for providing technical assistance to contractors, monitor utilization of payments to LBU firms, address and reconcile contractor's compliance concerns.
8. **Reporting.** Prepare a monthly report indicating LBU participation for the program and each respective project, identify upcoming procurement opportunities, and coordinate outreach activities.
9. **Work Plan.** Consultant shall submit a work plan identifying the approach, strategies, and staffing plan with the level of effort required for the following tasks: program analysis, outreach, procurement support, vendor engagement, community outreach, compliance and monitoring.

D. LIMITATIONS

This RFQ/P is not an offer by the District to contract with any party responding to this RFQ/P. The District reserves the right to add additional prequalified Respondents for consideration after distribution of this RFQ/P if it is found to be in the best interest of the District. All decisions concerning the selection will be made in the best interests of the District. The awarding of the contract pursuant to this RFQ/P, if at all, is at the sole discretion of the District.

The District makes no representation that participation in the RFQ/P process will lead to an award of contract or any consideration whatsoever. The District shall in no event be responsible for the cost of preparing any RFQ/P Packet in response to this RFQ/P. RFQ/P Packets and any other supporting materials submitted to the District in response to this RFQ/P will not be returned and will become the property of the District unless portions of the materials are designated as proprietary at the time of submittal, and are specifically requested to be returned. Vague designations and/or blanket statements regarding entire

pages or documents are insufficient and will not bind the District to protect the designated matter from disclosure. Pursuant to *Michaelis, Montanari, & Johnson v. Superior Court* (2006) 38 Cal.4th 1065, RFQ/P Packets shall be held confidential by the District and shall not be subject to disclosure under the California Public Records Act until after either: (1) the District and the successful Respondent have completed negotiations and entered into an Agreement, or (2) the District has rejected all Proposals. Furthermore, the District will have no liability to the Respondent or other party as a result of any public disclosure of any RFQ/P Packet.

E. RESTRICTIONS ON LOBBYING AND CONTACTS

From the period beginning on the date of the issuance of this RFQ/P and ending on the date of the award of the contract, no person, or entity submitting in response to this RFQ/P, nor any officer, employee, representative, agent, or consultant representing such a person or entity shall contact through any means or engage in any discussion regarding this RFQ/P, the evaluation or selection process/or the award of the contract with any member of the District, Governing Board, selection members, or any member of the Citizens' Oversight Committee. Any such contact shall be grounds for the disqualification of the Respondent submitting a RFQ/P Packet.

F. STATEMENT OF QUALIFICATIONS

1. General Information / Instructions - Statement of Qualifications

- 1.1.** The District is inviting Statements of Qualifications for the "Project" which shall require coordination, administration, consulting and advice, and related services.
- 1.2.** The District seeks to identify teams with a record of excellence in efficient planning and project delivery.
- 1.1.** The Statement of Qualifications must contain all requested information about the firm and must be on no larger than 8 1/2 x 11 paper and no more than fifteen (15) printed pages in length. The 15-page limit (as if printed single sided) shall cover Sections 2.1 thru 2.5 below. Statement of Qualifications should be complete and prepared to provide an insightful, straightforward, and concise overview of the capabilities of firm. Additional information about the firm and/or personnel may be placed in an Appendix which would not count against the 15-page limit.

2. Content – Statement of Qualifications

- 2.1. Letter of Interest** - A dated Letter of Interest must be submitted, including the legal name of the firm(s), address, telephone, email address(es) and fax numbers, and the name, title, and signature of the person(s) authorized to submit the Statement of Qualifications on behalf of the firm. The Letter of Interest should provide a brief statement of firm's experience indicating the unique background and qualities of the firm, its personnel, and its sub-consultants, and what will make the firm a good fit for work in the District. The letter shall also include the following statements:

"[RESPONDENT'S NAME] received a copy of the District's Agreement attached as **EXHIBIT A** to the RFQ/P. [RESPONDENT'S NAME] has reviewed the indemnity provisions in **EXHIBIT A** and insurance requirements contained in the Agreement. If given the opportunity to contract with the District, [RESPONDENT'S NAME] has no objections to the use of the Agreement."

Respondent shall certify that no official or employee of the District, nor any business entity in which an official of the District has an interest, has been employed or retained to solicit or assist in the procuring of the resulting contract(s), nor that any such person will be employed in the performance of any/all contract(s) without immediate divulgence of this fact to the District.

2.2. Executive Summary - The Executive Summary should contain an outline of firm's approach, along with a brief summary of firm's qualifications.

2.3. Firm Information

Narrative - Provide a comprehensive narrative of the services offered by firm. The narrative should include all of the following:

2.3.1. Provide a brief history of firm, team firms, and, if a joint venture, of each participating firm. Identify legal form, ownership, and senior officials of company(ies). Describe number of years in business and types of business conducted.

2.3.2. Describe firm's philosophy and how it will work with District administration officials, community partners and district facilities staff.

2.3.3. Discuss the firm's/team's ability to meet schedules for comparable projects, firm's schedule management procedures, and how the firm has successfully handled potential agency approval delays.

2.3.4. Identify school district and relevant building type projects performed by firm in the past three (3) years. Limit response to no more than the twenty (20) most recent projects. Please include the following information for each project.

- 2.3.4.1.** Name of project and client,
- 2.3.4.2.** Scope of projects, description of services provided,
- 2.3.4.3.** Contact person, telephone number and email address,
- 2.3.4.4.** Firm person in charge of each project,
- 2.3.4.5.** Construction dollar value of each project,

2.4. Litigation - All litigation arising from the project, if any, in the last five years. State the issues in the litigation, the status of litigation, names of parties, and outcome.

2.5 Professional Fees

Provide hourly rates for the respective positions and fee schedule as outlined below:

Year 1

- 1. Program Analysis \$ _____
- 2. Outreach \$ _____
- 3. Procurement Support \$ _____
- 4. Community Outreach \$ _____
- 5. Compliance & Monitoring \$ _____
- 6. Not-to-exceed total fee for Year 1 \$ _____
- 7. 10% contingency to NTE total fee in line 6 \$ _____

Year 2

- | | | |
|----|--|----------|
| 1. | Program Analysis | \$ _____ |
| 2. | Outreach | \$ _____ |
| 3. | Procurement Support | \$ _____ |
| 4. | Community Outreach | \$ _____ |
| 5. | Compliance & Monitoring | \$ _____ |
| 6. | Not-to-exceed total fee for Year 2 | \$ _____ |
| 7. | 10% contingency to NTE total fee in line 6 | \$ _____ |

Years 3 and 4 (Option Years)

- | | | |
|----|--|----------|
| 1. | Program Analysis | \$ _____ |
| 2. | Outreach | \$ _____ |
| 3. | Procurement Support | \$ _____ |
| 4. | Community Outreach | \$ _____ |
| 5. | Compliance & Monitoring | \$ _____ |
| 6. | Not-to-exceed total fee for year 3 | \$ _____ |
| 7. | 10% contingency to NTE total fee in line 6 | \$ _____ |
| 8. | Not-to-exceed total fee for year 4 | \$ _____ |
| 9. | 10% contingency to NTE total fee in line 8 | \$ _____ |

The 10% contingency will be to cover potential additional services and shall be subject to District approval.

The District reserves the right to negotiate different rates submitted with the RFQ/P prior to the execution of the agreement.

2.6. Additional Data - Provide additional information about the firm as it may relate to the Statement of Qualifications. These may include letters of reference or testimonials. Indicate ongoing commitment to professional education of staff, total number of permanent employees, and any other data that may assist the District in understanding firm's qualifications, capacity and/or expertise. This additional data shall be in an Appendix and will not be counted in the fifteen page SOQ limit.

3. Insurance (Mandatory Requirements)

Attach a sample Certificate of Insurance showing coverages are current or a letter from your insurance company indicating your firm's ability to provide insurance. The following is a tentative schedule:

- 3.1** A.M. Best financial strength rating (FSR) of A- or better.
- 3.2** Commercial General Liability Insurance: Commercial general Liability Insurance shall be at least as broad as Insurance Services office General Liability Coverage (Occurrence Form CG 0001), with coverage limits of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage/ Two Million Dollars (\$2,000,000) aggregate.
- 3.3** Automobile Liability Insurance: Automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 0001 covering Automobile

Liability, Code 1 (any auto), with coverage limits of at least One Million Dollars (\$1,000,000) for bodily injury and property damage each accident limit and Two Million Dollars (\$2,000,000) in the aggregate.

- 3.4** Workers' Compensation and Employer's Liability Insurance: The selected Architect shall insure (or be a qualified self-insured) under the applicable laws relating to workers' compensation insurance, all of their employees working on the Project, in accordance with the "Workers Compensation and Insurance Act," Division IV of the California Labor Code. The selected Architect shall provide employer's liability insurance in the amount of at least One Million Dollars (\$1,000,000) per accident for bodily injury and disease.
- 3.5** Errors and Omissions Insurance: errors and omissions insurance on an claims made basis with a limit of at least One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate with a deductible in an amount not to exceed the sum of Ten Thousand Dollars (\$10,000.00).
- 3.6** All insurance will be in a form and with insurance companies acceptable to the District.
- 3.7** Insurance carriers shall be qualified to do business in California and maintain an agent for process within the State.

4. Local, Small Local and Small Local Resident Business Enterprise Program

Submit a detailed description of the team's L/SL/SLRBE composition clearly indicating the name of the firms and percentages of participation on the following form ("Local Business Participation Worksheet").

LOCAL BUSINESS PARTICIPATION WORKSHEET

Prime Consultant:

RFQ/P: Local Business Utilization Consulting Services

Date:

Team Member	Projected Percent of Total Fee Per Team Member	LBE %	SLBE %	SLRBE %	City of Oakland or other OUSD approved agency. Certification Number and Expiration Date.
Prime Company: Address: Phone: Email:					
Company: Address: Phone: Email:					
Company: Address: Phone: Email:					
Company: Address: Phone: Email:					
Company: Address: Phone: Email:					
Company: Address: Phone: Email:					
TOTAL PARTICIPATION					

Approval – LBU Compliance Officer

G. District's Evaluation / Selection Process – Statement of Qualifications

1. Submittals will be reviewed for responsiveness and evaluated pursuant to established objective criteria, with particular attention to, without limitation, each respondent's qualifications, demonstrated competence in like construction, and the Firm's ability to integrate its personnel with the District's staff and consultants.
2. After the submittals are evaluated and/or ranked, the District, at its sole discretion, may elect to interview the top Firm(s). The District may elect to interview one or more Firms. Interviews are tentatively scheduled as indicated above. Any firm(s) selected for interviews must make available for interview the key personnel it intends to assign to the District's Project(s). Any comments or objections to the form of Agreement attached hereto as **EXHIBIT A** to this RFQ/P shall be provided in writing before the interview and may be the subject of inquiry at the interview. Any comments or objections to the form of Agreement not provided in writing before the interview will not be entertained by the District. Adequate time will be allowed for presentation of qualifications followed by questions and answers.
3. **District Investigations** - The District may check references, and may perform investigations of firm that extend beyond the information in the proposals. The District may conduct interviews of firms.

H. Final Determination And Award

The District reserves the right to contract with any entity responding to this RFQ/P, to reject any proposal as non-responsive, and not to contract with any firm for the services described herein. The District reserves the right to seek proposals from or to contract with any firm not participating in this process. The District reserves the right to reject any or all submissions, to request further information, to negotiate with any firm, to extend the submission deadline, or to amend or cancel in part or in its entirety this RFQ/P. This RFQ/P does not commit the District to award a contract or to reimburse any firm for costs incurred in submitting a proposal.

The awarding of contract(s) is at the sole discretion of the District. The District may, at its option, determine to award contracts only for portions of the scope of work. In such case, the successful proposing firm will be given the option not to agree to enter into the Agreement and the District will retain the right to negotiate with any other proposing firm selected as a finalist. If no finalist is willing to enter into a contract for the reduced scope of work, the District will retain the right to enter into negotiations with any other Respondent responding to this RFQ/P.

The RFQ/P packet, and any other supporting materials submitted to the District in response to this RFQ/P will not be returned and will become the property of the District unless portions of the materials are designated as proprietary at the time of submittal, and are specifically requested to be returned. This RFQ/P does not commit the District to negotiate an agreement with any proposing firm or individual.

END OF RFQ/P

ATTACHMENT 1

BOND PROJECTS

Reflected in Approved Bond Measure

PLEASE NOTE: The cost estimates associated with each project are NOT a legal commitment to fund those projects at those levels and the cost estimates are NOT included in the now-approved Bond Measure. Moreover, the cost estimates are just estimates, primarily based on information in the Facilities Master Plan; the actual cost of each project is almost certainly going to be different. The inclusion of the cost estimates in this document (and in the original version that was presented to the School Board as Attachment B) was to ensure that the projects identified in the Bond would likely be able to be funded by the \$735 million generated by the now-approved Bond Measure.

<u>Site</u>	<u>Proposed Project Scope</u>	<u>Est. Cost (in millions)</u>	<u>Location in Bond Proj. List</u>
Coliseum College Prep Academy (1390 66th Avenue)	› Site expansion › Additional classrooms	\$35.5	Site-Specific Projects
Claremont Middle School (5750 College Avenue)	› New kitchen › New cafeteria	\$18.0	Site-Specific Projects
Elmhurst United Middle School (1800 98th Avenue)	› Site modernization	\$10.0	Site-Specific Projects
Garfield Elementary School (1640 22nd Avenue)	› Site renovation or replacement (partial or total)	\$56.7	Site-Specific Projects
Hillcrest Elementary School (30 Marguerite Drive)	› New kitchen	\$1.7	Site-Specific Projects
Laurel Child Development Center (3825 California Street)	› Site renovation or replacement (partial or total)	\$11.5	Site-Specific Projects
Marcus Foster Educational Leadership Center (1025 2nd Avenue)	› Site plan › Site replacement › Facilities for alternative education and career technical education programming › Community service facilities › Central administration facilities, including but not limited to student and family facing services	\$15.0	Site-Specific Projects
McClymonds High School (2607 Myrtle Street)	› Site renovation or replacement (partial or total) › Site expansion to accommodate additional grade levels	\$65.0	Site-Specific Projects
Melrose Leadership Academy/ Maxwell Park Elementary School (5328 Brann Street and 4730 Flemming Avenue)	› Site renovation (partial or total) › Site expansion/school consolidation at 4730 Fleming Avenue	\$49.5	Site-Specific Projects

Piedmont Elementary School (4314 Piedmont Avenue)	› New kitchen	\$2.0	Site-Specific Projects
Roosevelt Middle School (1926 East 19th Street)	› Site renovation or replacement (partial or total)	\$70.6	Site-Specific Projects
Skyline High School (12250 Skyline Blvd)	› ADA compliance › Bathrooms › Remove, replace, or acquire portables › Seismic"	\$10.0	Site-Specific Projects
Administration and Governance Center	› Administration building(s)	\$50.0	District-Wide Projects
Projects to Increase Access/ Improve Quality	› Support school expansions/consolidations	\$10.0	District-Wide Projects
Districtwide Initiatives	› Possible facilities improvements at all sites, COVID-related facilities improvements, distance learning devices and infrastructure	\$200.2	District-Wide Projects
Bond Program Management	› Project managers, construction managers, accountants to oversee projects from conception to completion, etc.	\$56.0	Miscellaneous
Contingency	› 10% contingency for unexpected costs	\$73.5	Throughout
TOTAL		\$735.0	

EXHIBIT A

OAKLAND UNIFIED SCHOOL DISTRICT
GENERAL SERVICES AGREEMENT

This GENERAL SERVICES AGREEMENT (“Agreement”) is made and entered into effective _____, 20____ (the “Effective Date”), by and between the Oakland Unified School District (“District”) and _____ (“Contractor”).

1. **Contractor Services.** Contractor agrees to provide the following services to District (collectively, the “Services”):

_____.

2. **Contractor Qualifications.** Contractor represents and warrants to District that Contractor, and all of Contractor’s employees, agents or volunteers (the “Contractor Parties”), have in effect and shall maintain in full force throughout the Term of this Agreement all licenses, credentials, permits and any other qualifications required by law to perform the Services and to fully and faithfully satisfy all of the terms set forth in this Agreement. Contractor and any Contractor Parties performing services shall be competent to perform those services.

3. **Term.** This Agreement shall begin on _____, 20____, and shall terminate upon completion of the Services, but no later than _____ (“Term”), except as otherwise stated in **Paragraph 4** below. There shall be no extension of the Term of this Agreement without the express written consent of all parties. Written notice by the District Superintendent or designee shall be sufficient to stop further performance of the Services by Contractor or the Contractor Parties. In the event of early termination, Contractor shall be paid for satisfactory Services performed to the date of termination. Upon payment by District, District shall be under no further obligation to Contractor, monetarily or otherwise, and District may proceed with the work in any manner District deems proper.

4. **Termination.** Either party may terminate this Agreement at any time by giving thirty (30) days advance written notice to the other party, however the parties may agree in writing to a shorter notice period. Notwithstanding the foregoing, District may terminate this Agreement at any time by giving written notice to Contractor if Contractor materially breaches any of the terms of this Agreement, any act or omission of Contractor or the Contractor Parties exposes District to potential liability or may cause an increase in District’s insurance premiums, Contractor is adjudged a bankrupt, Contractor makes a general assignment for the benefit of creditors or a receiver is appointed because of Contractor’s insolvency. Such termination shall be effective immediately upon Contractor’s receipt of the notice.

5. **Payment of Fees for Services.** District agrees to pay Contractor fees at the rate of \$ _____ per _____ for Services satisfactorily performed *[require attachment of a schedule of all applicable hourly fees, if necessary]*. Contractor shall not increase the rate over the course of this Agreement. Total fees paid by District to Contractor for Services under the Agreement shall not exceed \$ _____ (the “Fee”). Contractor shall perform all Services required by the Agreement even if the Fee has already been paid and no more payments will be forthcoming. District agrees to pay the Fee, up to the maximum amount provided herein, within sixty (60) days of receipt of a detailed invoice

from Contractor, including any additional supporting documentation District reasonably requests.

6. **Indemnity.** Contractor shall defend, indemnify, and hold harmless District and its agents, representatives, officers, consultants, employees, Board of Trustees, members of the Board of Trustees (collectively, the “District Parties”), from and against any and all claims, demands, liabilities, damages, losses, suits and actions, and expenses (including, but not limited to attorney fees and costs including fees of consultants) of any kind, nature and description (collectively, the “Claims”) directly or indirectly arising out of, connected with, or resulting from any act, error, omission, negligence, or willful misconduct of Contractor, the Contractor Parties or their respective agents, subcontractors, employees, material or equipment suppliers, invitees, or licensees in the performance of or failure to perform Contractor’s obligations under this Agreement, including, but not limited to Contractor’s or the Contractor Parties’ use of the site, Contractor’s or the Contractor Parties’ performance of the Services, Contractor’s or the Contractor Parties’ breach of any of the representations or warranties contained in this Agreement, or for injury to or death of persons or damage to property or delay or damage to the District or the District Parties. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party, person, or entity described in this paragraph.

7. **Equipment and Materials.** Contractor at its sole cost and expense shall provide and furnish all tools, labor, materials, equipment, transportation services and any other items (collectively, “Equipment”) which are required or necessary to perform the Services in a manner which is consistent with generally accepted standards of the profession for similar services. Notwithstanding the foregoing, District shall not be responsible for any damages to persons or property as a result of the use, misuse or failure of any Equipment used by Contractor or the Contractor Parties, even if such Equipment is furnished, rented or loaned to Contractor or the Contractor Parties by District. Furthermore, District may reject any Equipment or workmanship that does not conform to the requirements of this Agreement and Contractor must then promptly remedy or replace it at no additional cost to District and subject to District’s reasonable satisfaction.

8. **Insurance.** Without in any way limiting Contractor’s liability, or indemnification obligations set forth in Paragraph 6 above, Contractor shall secure and maintain throughout the Term of this Agreement the following insurance: (i) comprehensive general liability insurance with limits of not less than \$ 1,000,000 each occurrence and \$2,000,000 in the aggregate; (ii) commercial automobile liability insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 in the aggregate, if applicable; and (iii) worker’s compensation insurance as required by Labor Code section 3200, *et seq.*, if applicable. Neither Contractor nor any of the Contractor Parties shall commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverages have been delivered to and approved by District. All insurance policies shall include an endorsement stating that District and District Parties are named additional insureds. All of the policies shall be amended to provide that the insurance shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days’ prior written notice has been given to District. If such a notice is not given or even if District receives a notice, District may, at its sole option, terminate this Agreement. All insurance policies shall include an endorsement stating that it is primary to any insurance or self-insurance maintained by District and shall waive all rights of subrogation against District and/or the District Parties. A copy of the declarations page of Contractor’s insurance policies shall be attached to this Agreement as proof of insurance.

9. **Independent Contractor Status.** Contractor is engaged in an independently established trade,

occupation, or business to provide the Services required by this Agreement and is hereby retained to provide specialized services for District that are outside the usual course of District's business. Contractor is free from the control and direction of District in connection with the manner in which it provides the Services to District. Contractor understands and agrees that Contractor and the Contractor Parties shall not be considered officers, employees, agents, partners, or joint venturers of District, and are not entitled to benefits of any kind or nature normally provided to employees of District and/or to which District's employees are normally entitled.

10. **Taxes.** All payments made by District to Contractor pursuant to this Agreement shall be reported to the applicable federal and state taxing authorities as required. District will not withhold any money from fees payable to Contractor, including FICA (social security), state or federal unemployment insurance contributions, or state or federal income tax or disability insurance. Contractor shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Contractor and the Contractor Parties and otherwise in connection with this Agreement.

11. **Fingerprinting/Criminal Background Investigation Certification.** Contractor and the Contractor Parties shall at all times comply with the fingerprinting and criminal background investigation requirements of the California Education Code ("Education Code") section 45125.1, and shall complete the Fingerprinting Notice and Acknowledgement Form and Student Contract Form.

12. **Tuberculosis Certification.** Contractor and the Contractor Parties shall at all times comply with the tuberculosis ("TB") certification requirements of Education Code section 49406. Accordingly, by checking the applicable boxes below, Contractor hereby represents and warrants to District the following:

A. Contractor and Contractor Parties shall **only have limited or no contact** (as determined by District) with District students at all times during the Term of this Agreement.

B. The following Contractor and Contractor Parties shall have **more than limited contact** (as determined by District) with District students during the Term of this Agreement and, at no cost to District, have received a TB test in full compliance with the requirements of Education Code section 49406:

_____.

[Attach and sign additional pages, as needed.]

Contractor shall maintain on file the certificates showing that the Contractor and Contractor Parties were examined and found free from active TB. These forms shall be regularly maintained and updated by Contractor and shall be available to District upon request or audit.

Contractor further agrees and acknowledges that all new personnel hired after the Effective Date of this Agreement by Contractor and Contractor Parties are subject to the TB certification requirements and shall be prohibited from having any contact with District students until the TB certification requirements have been satisfied and District determines whether any contact is permissible.

13. **Confidential Information.** Contractor shall maintain the confidentiality of, and protect from unauthorized disclosure, any and all individual student information received from the District, including but not limited to student names and other identifying information. Contractor shall not use such student information for any purpose other than carrying out the obligations under this Agreement. Upon termination of this Agreement, Contractor shall turn over to District all educational records related to the services provided to any District student pursuant to this Agreement.

14. **Assignment/Successors and Assigns.** Contractor shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations under this Agreement without the prior written consent of District. Subject to the foregoing, this Agreement shall be binding on the heirs, executors, administrators, successors, and assigns of the respective parties.

15. **Severability.** If any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

16. **Amendments.** The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by both parties and approved by the governing board.

17. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding its choice of law rules. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of Alameda, subject to transfer of venue under applicable State law, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by the District.

18. **Written Notice.** Written notice shall be deemed to have been duly served if delivered in person to Contractor at the address located next to the party signatures below, or if delivered at or sent by registered or certified or overnight mail to the last business address known to the person who sends the notice.

19. **Compliance with Law.** Each and every provision of law and clause required by law to be inserted into this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein. Contractor shall comply with all applicable federal, state, and local laws, rules, regulations and ordinances, including but not limited to fingerprinting under Education Code section 45125.1, confidentiality of records, Education Code section 49406 and others. Contractor agrees that it shall comply with all legal requirements for the performance of duties under this Agreement and that failure to do so shall constitute material breach.

20. **Non-Discrimination.** There shall be no unlawful discrimination in the contracting of persons under this Agreement because of race, color, national origin, age, ancestry, religion, sex, or sexual orientation of such persons.

21. **Attorneys' Fees.** If any legal action is taken to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and other reasonable costs

and expenses incurred in connection with that legal action.

22. **Liability of District.** Notwithstanding anything stated herein to the contrary, District shall not be liable for any special, consequential, indirect or incidental damages, including but not limited to lost profits in connection with this Agreement.

23. **Time.** Time is of the essence to this Agreement.

24. **Waiver.** No delay or omission by District in exercising any right under this Agreement shall operate as a waiver of that or any other right and no single or partial exercise of any right shall preclude the District from any or further exercise of any right or remedy.

25. **Entire Agreement.** This Agreement is intended by the parties as the final expression of their agreement with respect to such terms as are included herein and as the complete and exclusive statement of its terms and may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement, nor explained or supplemented by evidence of consistent additional terms.

26. **Ambiguity.** The parties to this Agreement, and each of them, hereby represent that the language contained herein is to be construed as jointly proposed and jointly accepted, and in the event of any subsequent determination of ambiguity, all parties shall be treated as equally responsible for such ambiguity.

27. **Execution of Other Documents.** The parties to this Agreement shall cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

28. **Execution in Counterparts.** This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, facsimile, or an original, with all signatures appended together, shall be deemed a fully executed agreement.

29. **Warranty of Authority.** The persons who have signed this Agreement warrant that they are legally authorized to do so on behalf of the respective parties, and by their signatures to bind the respective parties to this Agreement.

30. **Local Business.** Contractor shall comply with the requirements of the District's Local, Small Local, and Small Local Resident Business Enterprise Program, which may require a 50% minimum local participation requirement in the performance of this Agreement. A copy of this program may be obtained at www.ousd.k12.ca.us, under the Facilities Planning & Management Department drop down menu, at "Bids and Requests for Proposals."

31. **Forms.** The following forms, attached to the proposal, are incorporated into the contract:

- Roof project certification (if required; see Public Contract Code §3006).
- Fingerprinting Notice and Acknowledgement.
- Iran Contracting Act Certification.
- Workers' Compensation Certification.
- Drug-Free Workplace Certification.

- Buy American Certification.
- Local Business Participation Form.

Within ten (10) days after award and before commencement of the services, the signed agreement, insurance documentation, and Student Contract Form (see Exhibit B to the Fingerprinting Notice and Acknowledgement) shall be submitted to the District.

32. **Mediation.** A party to this Agreement shall, as a condition precedent to initiating any litigation against the other party, demand mediation of any dispute. The parties shall endeavor to include any third party claimant in the mediation. The parties shall select a mediator and schedule the mediation within thirty (30) days of the initial demand for mediation. If the parties cannot agree on a mediator, the mediator shall be appointed by JAMS. The parties to the mediation, including the parties to this Agreement, shall pay equal shares of the mediator’s fees. Each party shall bear its own attorney’s fees related to the mediation.

IN WITNESS WHEREEOF, the Parties hereto have executed this Agreement on the date indicated below:

DISTRICT:

OAKLAND UNIFIED SCHOOL DISTRICT

_____ Date
Aimee Eng, President, Board of Education

_____ Date
Kyla Johnson-Trammell,
Superintendent & Secretary, Board of Education

CONTRACTOR:

Name: _____

Title: _____

